

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

AVERY BRADFORD

Petitioner,

v.

WARDEN TARMARSHE SMITH,

Respondent.

**CIVIL ACTION NO.
3:23-cv-00052-TES-CHW**

**ORDER ADOPTING THE UNITED STATES MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

Before the Court is the United States Magistrate Judge's Report & Recommendation ("R&R") [Doc. 17] to grant Respondents' Motion to Dismiss [Doc. 12] for lack of jurisdiction and to dismiss without prejudice Petitioner Avery Bradford's Petition for Writ of Habeas Corpus [Doc. 1] brought pursuant to 28 U.S.C. § 2254. Because Petitioner did not file an objection to the R&R within the prescribed time period, the Court now reviews the R&R for clear error. *See* 28 U.S.C. § 636(b)(1)(C) *in connection with* Fed. R. Civ. P. 6(a)(1) & (d).

The magistrate judge recommended dismissal on the following grounds: Petitioner's current habeas petition arises out of the same conviction underlying his previously dismissed federal habeas petition. [Doc. 17, p. 1]; *see* Order Adopting Report and Recommendations, *Bradford v. Perry*, No. 3:19-cv-00016-CAR-CHW (M.D. Ga. Feb. 13, 2020), ECF No. 33. In other words, the instant petition is a successive petition under

§ 2244(b), and Petitioner needs an order from the Eleventh Circuit authorizing this Court to consider it. *See, e.g., Leal Garcia v. Quarterman*, 573 F.3d 214, 222 (5th Cir. 2009). The magistrate judge recommended dismissal because Plaintiff had not sought permission from the Circuit, and therefore, this Court lacks jurisdiction. [Doc. 17, p. 2].

Since the magistrate judge issued the R&R, however, new information has been made apparent to this Court. In Petitioner's previous § 2254 case, Petitioner did seek permission to file a successive petition, and on November 21, 2023, the Eleventh Circuit denied it. USCA Order Denying Application for Leave to File a Second or Successive Habeas Corpus Petition, *Bradford v. Perry* at 3, No. 3:19-cv-00016-CAR-CHW (M.D. Ga. Nov. 21, 2023), ECF No. 52. As a result, this Court lacks jurisdiction to consider Petitioner's successive petition. 28 U.S.C. § 2244(b)(3)(A).

Therefore, despite this Court's slight difference in reasoning in light of this new information, the Court **ADOPTS** the magistrate judge's R&R and **MAKES IT THE ORDER OF THE COURT**. Accordingly, the Court **GRANTS** Respondents' Motion to Dismiss [Doc. 12] and **DISMISSES** Petitioner Avery Bradford's Petition for Writ of Habeas Corpus [Doc. 1] **without prejudice.**¹

SO ORDERED, this 1st day of December, 2023.

S/ Tilman E. Self, III

TILMAN E. SELF, III, JUDGE

UNITED STATES DISTRICT COURT

¹ The Court also **DENIES as moot** Petitioner's Motion to Appoint Counsel [Doc. 18].